

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

EDWARD C. SPAHR,	:	
	:	
Plaintiff,	:	No. 4: CV-07-0458
	:	
v.	:	(McClure, J.)
	:	
MICHAEL J. ASTRUE,	:	(Magistrate Judge Smyser)
Commissioner of Social Security,	:	
	:	
Defendant.	:	

O R D E R

August 20, 2007

BACKGROUND:

On March 12, 2007, plaintiff, Edward C. Spahr, commenced this civil action under 42 U.S.C. §§ 405(g). Spahr appeals the Commissioner's decision to deny him disability benefits.

The matter was initially referred to United States Magistrate Judge J. Andrew Smyser.

On July 30, 2007, Magistrate Judge Smyser filed a sixteen-page report and recommendation. (Rec. Doc. No. 10.) The magistrate judge found that the Commissioner's decision was not supported by substantial evidence. Specifically, the magistrate judge concluded that the ALJ did not consider plaintiff's undisputed

testimony concerning the frequency, nature, and effect of his blackouts in determining plaintiff's residual functioning capacity and concluding that plaintiff could perform other work in the economy. (*Id.* at 11-16.) Therefore, the magistrate judge recommended that the case be remanded to the Commissioner for further consideration and specifically, so findings could be made concerning plaintiff's blackouts and the vocational relevance of these blackouts. (*Id.* at 16.)

On August 14, 2007, the Commissioner waived the opportunity to object to the report and recommendation.

The court agrees with the analysis of the magistrate judge and his recommendation and will order a remand.

NOW, THEREFORE, IT IS ORDERED THAT:

1. The report and recommendation of United States Magistrate Judge J. Andrew Smyser (record document no. 10, filed July 30, 2007) is approved and adopted in full for the reasons set forth therein.
2. The case is remanded to the Commissioner of Social Security for further consideration and, in particular, for more particular findings concerning the frequency, duration, severity and effects of his blackouts and concerning the vocational relevance of his blackouts.

3. The clerk is directed to close the case file.

s/ James F. McClure, Jr.

James F. McClure, Jr.

United States District Judge